

**United States Department of Labor
Employees' Compensation Appeals Board**

M.Y., claiming as widow of T.Y., Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Myers, VA, Employer**

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**Docket No. 06-1660
Issued: January 11, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2006 appellant filed a timely appeal of a June 26, 2006 merit decision of the Office of Workers' Compensation Programs, finding that her husband's death was not causally related to his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's husband's death on July 11, 2003 was causally related to his federal employment.

FACTUAL HISTORY

The Office accepted that the employee, a mason, sustained exacerbation of preexisting pulmonary disease due to factors of his federal employment. The claim was later expanded to

include chronic airway obstruction. Appellant stopped working as a mason on July 1, 1996.¹ He received appropriate compensation benefits.²

In a report dated February 21, 2003, Dr. Hamid Taheri, Board-certified in internal medicine, opined that the employee's heart condition was secondary to his underlying lung disease.

In a July 14, 2003 memorandum, the Office noted that it was informed that the employee died on July 11, 2003. A copy of the death certificate signed on July 14, 2003, listed the cause of death as respiratory arrest and chronic obstructive pulmonary disease (COPD).

By letter dated October 3, 2003, the Office advised appellant that she could submit a claim for death benefits and to provide a Form CA-5, copies of the death and marriage certificates, the itemized bills for the burial and a detailed narrative report from a physician who attended to the employee prior to his death. Appellant was advised that the report should include a detailed history, diagnosis, treatment rendered, and opinion as to the relationship of the disease or death to the employment factors and work-related conditions. She was also advised to provide copies of the medical records pertaining to the employee's hospitalization prior to his death.

On March 9, 2004 the Office received appellant's Form CA-5 which was dated February 17, 2004. Appellant indicated that the total burial expenses were \$3,838.30. She noted that the employee died on July 11, 2003 and that she attributed his respiratory arrest to his deteriorating lung disease. Appellant provided the records from the employee's hospitalization, which included his outpatient registration dated July 11, 2003 and contained an admitting diagnosis of cardiac arrest and a record of death, also dated July 11, 2003. The Office also received a copy of appellant's March 5, 1963 marriage certificate and an August 6, 2003 receipt from a funeral home which totaled \$3,648.30.

On April 1, 2004 the Office advised appellant that it was her responsibility to provide the evidence needed to support her claim. The Office also provided a copy of the letter to Pulmonary and Critical Care Specialists in Fairfax, Virginia.

On May 11, 2005 the Office referred the record to Dr. Leonard Y. Cosmo, Board-certified in internal medicine, who was asked to review the medical evidence and a statement of accepted facts and provide an opinion on whether the employee's death was related to his employment injury.

In a report dated May 25, 2005, Dr. Cosmo noted the employee's history of injury and treatment. He opined that it "appeared that the cause of death is not causally related to the work exposures of September 1, 1989. The death that occurs over a decade or approximately 14 years later is not due to the exposures of dust but due to specific medical conditions." Dr. Cosmo explained that the employee's cause of death was primarily associated with his underlying

¹ The record reflects that appellant had a history of smoking cigarettes and pipe tobacco.

² The employee eventually returned to work in an alternative position and a loss of wage-earning capacity decision was issued on February 24, 1998.

medical problems including cardiomyopathy, complicated with a reduced ejection fraction and abnormal left ventricular dysfunction, arrhythmias. He advised that treatment requiring anti-arrhythmic agents had a higher incidence of morbidity and mortality and that the employee's cause of death was associated with his underlying cardiac disease. Dr. Cosmo also explained that pulmonary function testing revealed a "lack of objective medical documentation to support any significant respiratory or pulmonary impairment." He noted that the pulmonary function tests were "indicative of fairly good flow rates and lung volumes." Dr. Cosmo also noted that the spirometry or lung volumes did not show any significant respiratory or pulmonary lung impairment, or serious pulmonary obstructive or restrictive disorder. The employee had preexisting diabetes and a history of obstructive sleep apnea syndrome, which made him more susceptible to developing cardiac complications including cardiomyopathy. Dr. Cosmo opined that the employee's prior exposures did not lead to any significant lung disease and that his cause of death was not work related. He opined that the cause of death was sudden and associated with significant cardiac arrhythmias and underlying cardiac disease.

On September 23, 2005 the Office advised appellant's congressional representative that Dr. Cosmo did not address an accepted condition and thus the case was being referred to a pulmonary specialist.

On April 4, 2006 the Office referred the record for a second opinion, together with a statement of accepted facts, a set of questions and the medical evidence to Dr. Ajit Raisinghani, Board-certified in internal medicine and cardiovascular disease.

In a report dated April 25, 2006, Dr. Raisinghani, described the employee's history of injury and treatment and noted that pulmonary function tests from September 2002 showed mild obstructive lung disease with severe air trapping and a total lung capacity of 5.55 or 129 percent of predicted. He noted that, when the paramedics had presented, the employee was bradycardiac and had pulse less electrical activity (PEA). Dr. Raisinghani noted that the employee's cardiac history developed in 2002 when he presented with atrial fibrillation and heart failure and opined that the employee died from cardiac-related arrhythmia. He explained that there was no relationship between the employee's heart disease and the accepted COPD. Dr. Raisinghani also explained that, while some persons with COPD could have some atrial arrhythmias, he was not aware of them having a higher incidence of atrial fibrillation, with which the employee presented. Furthermore, he explained that COPD did not cause heart disease, which was caused by smoking and other cardiac risk factors. Dr. Raisinghani opined that atrial fibrillation was not a direct cause of the employee's death.

By decision dated June 26, 2006, the Office denied appellant's claim for survivor's benefits on the grounds that the medical evidence failed to establish that the employee's death was due to his accepted employment injury.

LEGAL PRECEDENT

The United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.³

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his employment. This burden includes the necessity of furnishing rationalized medical opinion evidence of a cause and effect relationship, based on a complete factual and medical background, showing causal relationship. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.⁴

ANALYSIS

The Office relied on Dr. Raisinghani's April 25, 2006 report in finding that the employee's death was not caused by his federal employment.⁵

In a report dated April 25, 2006, Dr. Raisinghani provided a reasoned opinion in which he described the employee's history of injury and treatment. He also reviewed diagnostic test results which included pulmonary function tests from September 2002 which showed mild obstructive lung disease with severe air trapping. Dr. Raisinghani explained that the employee was bradycardiac and had PEA on July 11, 2003 when the paramedics arrived. Furthermore, he advised that the employee had a cardiac history dating back to 2002 when he presented with atrial fibrillation and heart failure. Dr. Raisinghani explained that the employee died from cardiac-related arrhythmia and that there was no relationship between the employee's heart disease and COPD and that there was no causal connection between the two. Additionally, he explained that some persons with COPD could have some atrial arrhythmias, but that he "was not aware of them having a higher incidence of atrial fibrillation, which the [employee] presented with." Dr. Raisinghani concluded that the employee's death was caused by smoking and other cardiac risk factors but that atrial fibrillation was not a direct cause of the employee's death.

The Board finds that Dr. Raisinghani offered an unequivocal opinion on the essential element of causal relationship and he supported that opinion with medical rationale. The Board finds that Dr. Raisinghani's opinion represents the weight of the medical evidence on the issue of causal relationship.

Appellant has not provided any reasoned medical evidence to support that the employee's death was causally related to his employment. Therefore, appellant has failed to establish her claim.

³³ 5 U.S.C. § 8102(a); *see id.* § 8133 (compensation in case of death).

⁴ *Lois E. Culver*, 53 ECAB 412 (2002).

⁵ The Board notes that Dr. Cosmo did not consider the accepted conditions and, therefore, his report was not utilized.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's death on July 11, 2003 was causally related to his work injury.

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board